

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 00-0427**

**For The Period: 1997 & 1998**

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**ISSUES**

**I. Sales/Use Tax: Model/Display Manufactured Homes**

**Authority:** IC 6-2.5-3-1; IC 6-2.5-3-2; IC 6-2.5-3-4; 45 IAC 2.2-3-15; 45 IAC 2.2-5-8(j); Monarch Beverage v. Indiana Dept. of State Revenue, 589 N.E.2d 1209 (Ind.Tax 1992).

The taxpayer protests the assessment of tax on manufactured homes for model/display.

**STATEMENT OF FACTS**

Taxpayer is a producer of manufactured homes. The taxpayer has display homes at its manufacturing plant that it uses as models for prospective buyers. The taxpayer sells its manufactured homes through independent builders, dealerships, and planned home communities.

**I. Sales/Use Tax: Model/Display Manufactured Homes**

**DISCUSSION**

The taxpayer argues that its display homes are treated as inventory, and that the homes are used to "acquaint [customers] with the features of a [the taxpayer's manufactured home] and display various options that are available."

The taxpayer summarizes its position as follows:

[The] units are inventory held for resale. The units could be moved off of their existing platform with minimal effort and could be transferred to a prospective customer's building site within days. Accordingly, we feel these units are inventory for resale and should be exempt from sales and use tax until the final sale occurs.

The taxpayer, shortly before the hearing date, faxed to the Department documents that it says shows that the display homes were eventually sold. In a cover sheet to the fax, the taxpayer stated:

Here are the four houses invoices that were on display in 1997 and 1998. We have sold all four models and have collected the sales tax for each.

Additionally, the taxpayer stated that there was no true foundation, the models could be bought and shipped within a two-week time frame if a buyer so desired.

The Indiana Code 6-2.5-3-1 defines “use” as:

- (a) “Use” means the exercise of any right or power of ownership over tangible personal property.

And in pertinent part in IC 6-2.5-3-2:

- (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

And finally the use tax exemption, IC 6-2.5-3-4:

- (a) The storage, use, and consumption of tangible personal property in Indiana is exempt from the use tax if:
  - (1) the property was acquired in a retail transaction in Indiana and the state gross retail tax has been paid on the acquisition of that property; or
  - (2) the property was acquired in a transaction that is wholly or partially exempt from the state gross retail tax under any part of IC 6-2.5-5, except IC 6-2.5-5-24(b), and the property is being used, stored, or consumed for the purpose for which it was exempted.
- (b) If a person issues a state gross retail or use tax exemption certificate for the acquisition of tangible personal property and subsequently uses, stores, or consumes that property for a nonexempt purpose, then the person shall pay the use tax.

The questions before the Department can be stated as, “Were the homes converted from inventory by the taxpayer’s use of them as display models and thus subjecting the taxpayer to the “use tax” statute?” And, “Does the assessment of use tax on display homes (eventually) sold constitute double-taxation?”

The auditor contends that the taxpayer made nonexempt use of the display homes. The auditor relies on 45 IAC 2.2-3-15 and 45 IAC 2.2-5-8(j). The former regulation states that

“If any person who issues an exemption certificate ... thereafter makes any use of the tangible personal property” that is “not permitted by the exemption, such use, consumption, or storage shall become subject to the use tax. ...” The latter regulation, 45 IAC 2.2-5-8(j), says the following:

Managerial, sales, and other non-operational activities. Machinery, tools, and equipment used in managerial sales, research, and development, or other non-operational activities, are not directly used in manufacturing and, therefore, are subject to tax. This category includes, but is not limited to, tangible personal property used in any of the following activities: management and administration; *selling and marketing; exhibition of manufactured or processed products; ...* .  
(Emphasis added)

The display homes were for exhibition (tours for prospective buyers), which is set out in 45 IAC 2.2-5-8(j) (*See* the italicized portions above) as taxable. The fact that the taxpayer had utilities hooked up, carpeted and furnished the homes, further shows that the taxpayer made use of the homes in a selling, marketing, and exhibition mode.

Regarding the double-taxation issue, the auditor noted at the time of the audit:

[An independent] dealer purchased and occupies one of the show models for uses as a sales office. The taxpayer did not provide evidence of ever selling one of these display homes except for the model sold to the dealer.

The taxpayer provided, prior to the hearing, documentation that purports to show that the homes were in fact sold. The taxpayer argues that it cannot be charged use tax on display homes that were sold. The touchstone case in Indiana on double-taxation is Monarch Beverage v. Indiana Dept. of State Revenue, 589 N.E.2d 1209 (Ind.Tax 1992). The court in that case stated “sales or use tax can be collected more than once on the same item if the item is subject of more than one nonexempt transaction.” Id. at 1214.

In the present case the *taxpayer* is being assessed use tax on the materials used in manufacturing the display homes—thus the *taxpayer itself* owes the use tax. With regard to the sales of the display homes the taxpayer is acting as an *agent* for the state (that is, the taxpayer is not the one who owes the tax, its *customers* do. The taxpayer is simply collecting and remitting the tax, as required, for the State of Indiana). The use tax and sales tax are for two separate and distinct transactions—one the use of the display homes for exhibition tours, the other the eventual sale of the homes.

### **FINDING**

The taxpayer’s protest is denied.